

DISCIPLINARY ACTION

PRIVATE ADMONITION.

ODC File Nos. 108366-B & 110023-B Effective Date: January 9, 2014

A Panel of the Preliminary Review Committee (“PRC”) of the Board on Professional Responsibility (“BPR”) offered a private admonition to an attorney as a result of its finding of probable cause that the attorney violated Rules 1.5(f) and 1.15(d) of the Delaware Lawyers’ Rules of Professional Conduct (“Rules”) in two separate matters. The attorney accepted the private admonition.

The attorney represented a defendant in a criminal case. The client paid the attorney a retainer for his representation. The attorney deposited the retainer in the client’s escrow account held by the attorney. The attorney transferred funds from the client’s escrow account to the attorney’s operating account, taken as legal fees, prior to earning the full amount transferred. The attorney also failed to notify the client said fees were being withdrawn and failed to advise the client that any unused portion of retainer, not earned by the attorney in fees, was refundable.

By taking funds from the client’s escrow account prior to earning them as legal fees, failing to notify the client of the transfer of said funds, and failing to advise the client these funds were refundable, if not earned, the attorney violated Rule 1.5(f)(fees).

In a second matter, the attorney accepted a check from a client as a retainer for the attorney's representation. The attorney submitted the check to his bank for deposit in the client's escrow account. The client's check "bounced" for insufficient funds. The attorney wrote two checks from the client's escrow account prior to confirming the client's check "cleared," resulting in an overdraft.

By failing to maintain his financial books and records, including requirements applicable to all fiduciary and escrow accounts, the attorney violated Rule 1.15(d).

In support of a determination that a sanction of a private admonition for violating Rules 1.5(f) and 1.15(d) was an appropriate sanction for the attorney's professional misconduct in the two matters, the PRC considered, as mitigation: (1) the attorney had no prior disciplinary record; (2) the attorney cooperated with the Office of Disciplinary Counsel and the Lawyer's Fund for Client Protection and provided full disclosure about the facts and circumstances involved; and (3) the attorney agreed to engage in remedial efforts to correct the deficiencies and improve his office procedures.